

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LISA ADAMS-RUNION,

Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY
OF AMERICA; and DOES 1-100,
inclusive,

Defendants.

No. 2:20-cv-01042-JAM-DB

**ORDER GRANTING JUDGMENT FOR
DEFENDANT; FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

I. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Lisa Adams-Runion ("Plaintiff") brought this action against Defendant Unum Life Insurance Company of America ("Unum Life" or "Defendant") pursuant to the Employment Retirement Income Security Act ("ERISA") following Unum Life's denial of Plaintiff's request for long term disability benefits. Unum Life issued a group long term disability policy to Tenet Healthcare Corporation and Plaintiff obtained coverage under this policy through her employment with Doctor's Hospital of Manteca, which is owned by Tenet Healthcare. Plaintiff was a Director of Laboratory Services at Doctor's Hospital of Manteca. Plaintiff's

1 last day worked was March 14, 2019. She applied for Short- and
2 Long-Term Disability through Unum Life. Unum Life issued a
3 primary denial letter on September 4, 2019. Plaintiff appealed
4 the denial of long-term disability benefits. On November 14,
5 2019, Unum Life re-affirmed its denial of benefits. On May 5,
6 2020, Plaintiff filed this lawsuit (ECF No. 1) pursuant to ERISA,
7 seeking damages for Unum Life's denial of long-term disability
8 benefits.

9 On July 1, 2021, Unum Life lodged the Administrative Record
10 ("AR") and the applicable Insurance Policy in this case (ECF
11 No. 11). Both parties subsequently filed cross-motions for
12 judgment under Federal Rule of Civil Procedure 52.1 (ECF Nos. 12,
13 16) and, at the Court's request, Proposed Findings of Fact and
14 Conclusions of Law (ECF Nos. 31, 32).

15 II. FINDINGS OF FACT

16 A. The Parties

17 1. Plaintiff was a Director of Laboratory Services at
18 Doctor's Hospital of Manteca in Manteca, California.

19 2. Plaintiff's major duties and responsibilities were to
20 direct, coordinate and supervise all activities in the
21 laboratory.

22 3. According to Plaintiff, her job required sitting for
23 six or more hours per day and she was not required to lift more
24 than 20 pounds.

25 4. According to Plaintiff, her job was very high stress.

26 5. Plaintiff worked 32 hours per week.

27 B. The Policy

28 6. Unum Life issued the group Long Term Disability Policy,

no. 546864001 at issue in this case, to Tenet Healthcare Corporation effective January 1, 1998 ("the Policy").

7. Plaintiff obtained coverage under the Policy through her employer which is owned by Tenet Healthcare Corporation.

8. The Policy requires the claimant to provide Proof of Claim, including restrictions or limitations ("R/Ls") preventing the claimant from performing, in relevant part, his or her Regular Occupation ("RO").

9. Policy benefits become payable following the Elimination Period ("EP"), which is defined as "a period of continuous disability which must be satisfied before you are eligible to receive benefits from Unum."

10. The Policy's EP for Group 2 employees, including Plaintiff, is 90 days.

11. Also, for Group 2 employees including Plaintiff, the Policy defines "disability" for the first 24 months of payments as:

You are disabled when Unum determines that:

- You are **limited** from performing the **material and substantial duties** of your regular occupation due to your **sickness** or **injury**; and
- You have a 20% or more loss in your **indexed monthly earnings** due to the same sickness or injury. (Emphasis in original.)

12. "Limited" means what you cannot or are unable to do.

13. "Material and Substantial Duties" means that:

- Are normally required for the performance of your regular occupation; and
- Cannot be reasonably omitted or modified, except that if you are required to work on average in excess of 40 hours per week, Unum will consider your ability to perform that requirement if you are

1 working or have the capacity to work 40 hours per
2 week.

3 14. "Regular Occupation" means:

- 4 • The occupation you are routinely performing when
5 your disability begins. Unum will look at your
6 occupation as it is normally performed in the
7 national economy, instead of how the work tasks are
8 performed for a specific employer or at a specific
9 location.

10 15. After 24 months of payments under the RO definition,
11 the definition of disability requires the claimant to be "unable
12 to perform the duties of any gainful occupation for which [they]
13 are reasonably fitted by education training or experience."

14 16. The Policy also has a 24-month limited pay period for
15 disabilities due to mental illness which is defined to include
16 anxiety.

17 17. Coverage under the Policy ends on the last day the
18 participant is in active employment.

19 18. The Policy defines "Active Employment" as:

- 20 • You are working for your Employer for earnings that
21 are paid regularly and that you are performing the
22 material and substantial duties of your regular
23 occupation. You must be scheduled to work at least
24 the minimum number of hours as described by each
25 facility.

26 C. Plaintiff's Medical History Before March 14, 2019

27 19. Plaintiff has a history of coronary artery disease and
28 had a mitral valve repair surgery on September 26, 2015.

29 20. After Plaintiff recovered from the 2015 surgery, she
30 returned to full-time full duty work on February 1, 2016.

31 21. On May 8, 2018, Plaintiff saw her cardiologist, Dr. Zoe
32 Yu, for dizziness, presyncope, and throat/back pressure

1 experienced during a meeting. The workup was negative and
2 echocardiogram showed normal heart function with an ejection
3 fraction rate of 72%.

4 22. On November 27, 2018, Plaintiff had her next visit with
5 Dr. Yu. She complained of fatigue and shortness of breath after
6 going up a hill or climbing a flight of stairs, as well as chest
7 pain about twice per week lasting 30 minutes. Dr. Yu examined
8 Plaintiff and noted she appeared well and in no distress. She
9 did detect a heart murmur and ordered additional tests, including
10 a transthoracic echocardiogram. She also prescribed
11 nitroglycerin as needed for chest pain. Dr. Yu's primary
12 diagnosis was dyspnea on exertion/fatigue, and her secondary
13 diagnosis was coronary artery disease. Dr. Yu advised Plaintiff
14 to follow-up in one month.

15 23. On December 24, 2018, Plaintiff had a left heart
16 catheterization angiography to evaluate her chest pain. The test
17 results noted Plaintiff's native multi-vessel coronary artery
18 disease, but also noted 4/4 patent bypass grafts, normal left
19 ventricular systolic function, moderate 2+ mitral valve
20 regurgitation, and "upper limits of normal left valve end
21 diastolic pressure."

22 24. A patent graft is one that is open and unobstructed.

23 25. On January 9, 2019, Plaintiff followed up with Dr. Yu,
24 who noted that the December 2018 recent coronary angiogram showed
25 her four grafts were patent. Dr. Yu also noted that Plaintiff
26 continued to report chest pain with back pain during emotional
27 stress, and fatigue after walking up a hill. Her physical exam
28 was unremarkable. Dr. Yu did not provide R/Ls, or recommend that

1 Plaintiff stop work or increase treatment. She did advise
2 Plaintiff to return in six months.

3 26. Dr. Yu noted "She plans to retire in March."

4 27. On January 30, 2019, Plaintiff saw her family
5 physician, Dr. Dolores Policicchio, for joint pain. No physical
6 examination was documented and no other medical conditions or
7 symptoms were listed. Plaintiff was prescribed Tramadol.

8 D. Plaintiff's Retirement in March 2019 and Treatment
9 During That Period

10 28. Plaintiff's last day worked was March 14, 2019. She
11 reported she worked a full 8 hours that day.

12 29. On March 14, 2019, Plaintiff posted on Facebook:
13 "Started New Job at Retired" and "Officially Retired Today".

14 30. Plaintiff's Facebook page as of March 14, 2019,
15 indicated she lived in Gold Beach, Oregon, having moved from
16 Sacramento.

17 31. Plaintiff remained on company payroll until March 18,
18 2019, to get her bonus.

19 32. Plaintiff was not on a covered leave of absence when
20 she stopped work after March 14, 2019.

21 33. On March 14, 2019, at 10:10 am, Dr. Policicchio's
22 Office issued a Kaiser "Work Status Report" placing Plaintiff off
23 work from March 15 to May 14, 2019.

24 34. The Work Status Report and Attending Physician
25 Statement did not identify a reason why Plaintiff was off work,
26 her job duties or any symptoms preventing her from working.
27 Dr. Policicchio's treatment notes did indicate that it was not
28 permanent.

1 35. On March 14, 2019, at 10:36 am, Plaintiff saw
2 Dr. Policicchio's medical assistant for fatigue and angina. At
3 11:05 am, Plaintiff saw Dr. Policicchio. Under "Subjective",
4 Dr. Policicchio noted "High stressful job". Dr. Policicchio's
5 physical exam noted Plaintiff was alert, well appearing, and in
6 no distress. Dr. Policicchio diagnosed fatigue and ordered blood
7 tests to evaluate Plaintiff's lipid panel, iron levels, ferritin
8 levels and blood count.

9 36. Dr. Policicchio did not refer Plaintiff to a specialist
10 to address any of her symptoms, including stress or fatigue, and
11 there were no future appointments scheduled.

12 37. On March 18, 2019, Dr. Policicchio advised Plaintiff
13 that her iron and ferritin levels tested on March 14, 2019 looked
14 good.

15 E. Plaintiff's Post-Retirement Treatment and Claims for
16 Disability Benefits

17 38. On May 1, 2019, Plaintiff discussed her STD claim with
18 Unum Life and confirmed she was already living in Oregon and that
19 she would not be returning to work.

20 39. On May 16, 2019, Plaintiff emailed Dr. Policicchio to
21 extend her "off work" status:

22 *"Can you extend my time off? I have applied for*
23 *social security disability based on my fatigue, heart*
24 *conditions, and chest pain. I cannot handle the*
25 *stresses of my profession with my heart being*
compromised; however long you can extend would be
appreciated; I am determined that I am not going to be
one of those people that dies at my desk."

26 40. On May 17, 2019, without speaking to or examining
27 Plaintiff, Dr. Policicchio issued another Off Work Status Note
28 online, suggesting she had seen Plaintiff on May 16, 2017, and

1 was placing Plaintiff off work from May 15, 2019 through July 31,
2 2019.

3 41. On June 6, 2019, Unum Life initiated assessment of
4 Plaintiff's LTD claim, including phone calls with Plaintiff on
5 June 6, 2019 and June 11, 2019, to learn more about her claim
6 that she was no longer able to perform her occupation.

7 42. Plaintiff reported that her condition had deteriorated
8 to the point that she was being rushed out of meetings to the
9 emergency room.

10 43. Plaintiff also stated that she passed out daily due to
11 a lack of oxygen.

12 44. Plaintiff's medical records do not contain
13 documentation that Plaintiff passed out daily or had significant
14 pre-syncope episodes. The records do note a single occurrence of
15 pre-syncope at work on May 2018, in which Plaintiff was taken to
16 the hospital and fully worked up, however the test results were
17 unremarkable.

18 45. After the May 2018 treatment, Plaintiff did not return
19 to Dr. Yu again until November 2018, and there was no record that
20 she had passed out in the interim; she reported that her main
21 symptoms since June 2018 were fatigue and dyspnea on exertion.

22 46. When Plaintiff next returned to Dr. Yu on January 9,
23 2019, she did not note any passing-out incidents (daily or
24 otherwise) and she advised Dr. Yu that she planned to retire in
25 March.

26 47. On her June 6, 2019 call with Unum Life, Plaintiff
27 confirmed that no attending physician provided any R/Ls before
28 her last day worked, but she did say that Dr. Policicchio had

1 advised her to stop working.

2 48. On her June 11, 2019 call with Unum Life, Plaintiff
3 stated she had been in her Oregon home for three months, was able
4 to drive, boat, go out for meals, do small house chores, perform
5 her activities of daily living ("ADLs") independently, use the
6 computer (including Facebook), read, watch TV and manage her
7 finances. She confirmed her job did not require her to travel
8 outside the hospital, but she felt she was unable to do her job
9 because it required her to be on call 24/7 and was very high
10 stress. Plaintiff stated that she got fatigued with little
11 effort or exertion and her heart could not handle any stress.
12 She also confirmed that she no longer treated with cardiologist,
13 Dr. Yu.

14 49. On June 19, 2019, Plaintiff called Dr. Policicchio to
15 discuss her disability claim. The appointment lasted between 11
16 and 20 minutes.

17 50. Also on June 19, 2019, Dr. Policicchio completed an
18 Attending Physician's Statement ("APS"), which indicated that
19 Plaintiff's last office visit was June 17, 2019. Dr. Policicchio
20 listed the primary diagnoses that may impact Plaintiff's
21 functional capacity as: History of MI; CABG 5 arteries; Mitral
22 Valve Repair; Vitamin B 12 Deficiency; Coronary Artery Disease;
23 Anemia, Iron Deficiency; Atherosclerosis of Aorta;
24 Hyperlipidemia, and Fatigue.

25 51. There is no record in Dr. Policicchio's records of an
26 office visit on or around June 17, 2019, just a single blank
27 page.

28 52. Plaintiff was living hundreds of miles away (a nine

1 hour drive) from Dr. Policicchio's office by June 17, 2019.

2 53. On June 19, 2019, Plaintiff established care with
3 Oregon family physician Dr. Reginald Williams. Dr. Williams
4 noted Plaintiff's self-reported medical history and took her word
5 that she was on disability. He noted he "advised her to continue
6 with disability ... from a cardiac standpoint, stress being one of
7 the modalities to work that I think would be very destructive for
8 this lady." Dr. Williams' physical examination was normal and no
9 fatigue, chest pain or dyspnea were noted; hypertension ("HTN")
10 was under control, and no heart murmur was detected.

11 54. On June 27, 2019, Plaintiff forwarded Unum Life another
12 APS from Dr. Policicchio dated June 26, 2019, which suggested she
13 treated Plaintiff on May 15, 2019. Dr. Policicchio listed
14 Plaintiff's only diagnosis as "fatigue," and estimated that she
15 could return to work by August 1, 2019. She did not explain how
16 or why the fatigue prevented Plaintiff from performing her
17 occupational duties. She did not refer her to any specialists.

18 F. Unum Life's Review and Denial of Plaintiff's Claim and
19 Plaintiff's Appeal

20 55. On July 11, 2019, Unum Life Senior Vocational
21 Rehabilitation Consultant ("Sr. VRC") Deborah Maxcy reviewed
22 Plaintiff's occupational duties and confirmed that in the
23 national economy it most closely resembled that of a Head of
24 Medical Laboratory and required frequent sitting, reaching,
25 handling, and fingering, and occasional standing, walking, and
26 stooping. It also required occasional exertion up to 20 pounds
27 (consistent with Plaintiff's report).

28 56. On July 12, 2019, Unum Life Registered Nurse Sherry Roy

1 reviewed Plaintiff's medical records. Nurse Roy noted the
2 following observations: (a) Plaintiff's complaints about chest
3 and back pain during emotional stress, and feeling fatigued with
4 hardly any exertion; (b) When Plaintiff initially saw Dr. Yu in
5 November 2018, she reported fatigue after climbing hills or
6 stairs, and when she saw Dr. Yu in January 2019, he recommended a
7 follow up visit within six months, which did not suggest an acute
8 condition; (c) Plaintiff's last exam with Dr. Policicchio on
9 March 14, 2019 was normal, as was her exam with Dr. Williams, and
10 Plaintiff had not returned for further cardiology workup since
11 stopping work; (d) Dr. Williams noted that Plaintiff's HTN was
12 under control, no heart murmurs were detected, and Plaintiff was
13 not taking any nitroglycerin for her angina; and (e) The medical
14 information, including the level and intensity of treatment, did
15 not support that Plaintiff was unable to perform her occupation,
16 and that her level of reported impairment was inconsistent with
17 the medical evidence.

18 57. On July 16, 2019, Unum Life On-Site Physician ("OSP")
19 Dr. Wesley Johnson, Board Certified in Family Medicine, attempted
20 to speak with Dr. Policicchio regarding Plaintiff's conditions,
21 but was unsuccessful.

22 58. Dr. Johnson sent a letter to Dr. Policicchio setting
23 forth his analysis of Plaintiff's relevant medical history and
24 functional capacity. Dr. Johnson summarized the duties of
25 Plaintiff's regular occupation, as identified by Sr. VRC Maxcy,
26 and asked Dr. Policicchio (1) if she would like to defer further
27 opinion to Plaintiff's new treating doctor and/or (2) if she
28 believed Plaintiff could meet the demands of her occupation.

1 59. Dr. Johnson also sent a similar letter to Dr. Williams
2 on July 22, 2019.

3 60. On August 5, 2019, having received no response from
4 either Dr. Policicchio or Dr. Williams, Dr. Johnson documented
5 his review of Plaintiff's medical information and his finding
6 that Plaintiff was able to perform her occupational duties. He
7 concluded in pertinent part:

8 (. . .) Multiple normal physical examinations are
9 documented over the last six months and there has been
10 no additional evaluation for the claimant's reported
fatigue. (. . .)

11 The available medical information does not support
12 that the claimant is precluded from the occupational
13 demands listed above. Recent evaluation and
14 examinations have been normal. There has been no
15 change in the medical management of her cardiac
16 conditions or chest pain. The claimant reports chest
17 pain due to the stress of her work environment
18 multiple times in the medical record. Laboratory
19 evaluation for reported fatigue was normal and the
claimant's self-reported activities and recent move
are not consistent with fatigue being a limiting
condition. There is no discussion or evaluation in
the medical records around cognitive concerns. There
is no further evaluation or treatment around work-
related stress and its relationship with the
claimant's reported chest pain, suggesting no
impairing behavioral health conditions.

20 61. Also on August 5, 2019, Unum Life referred Plaintiff's
21 file for an additional medical opinion.

22 62. On August 6, 2019, Dr. Williams responded to Dr.
23 Johnson's letter, expressly agreeing that Plaintiff was "able to
24 meet the demands" of her regular occupation.

25 63. On August 7, 2019, Unum Life Designated Medical Officer
26 ("DMO") Zaw Maung, M.D., Board Certified in Occupational
27 Medicine, reviewed Plaintiff's records and concluded that
28 Plaintiff was capable of performing her occupational demands.

1 64. Dr. Maung noted Plaintiff's coronary artery bypass
2 surgery in 2015 and her hospitalization for cardiac complaints in
3 May 2018, but noted (i) her follow-up cardiac evaluations were
4 normal, (ii) she had returned to work after both the 2015 surgery
5 and the 2018 hospitalization; (iii) her bypass grafts were patent
6 as of December 2018, and (iv) there was no documented
7 acceleration of her medical management in response to her reports
8 of ongoing chest pain.

9 65. Dr. Maung noted that Plaintiff's "lab work-up have been
10 unremarkable including normal iron studies and blood count,
11 suggesting reported iron deficiency anemia is not contributory to
12 complaints of fatigue." and that Plaintiff's self-reported
13 activities, including her recent move, suggested that fatigue was
14 not a limiting condition.

15 66. Dr. Maung concluded that "based on the available
16 medical data, there is nothing to suggest that the claimant is
17 incapable of performing the occupational demands on a full-time
18 basis."

19 67. On August 12, 2019, Plaintiff reported that Dr.
20 Policicchio's office had contacted her and they were unsure what
21 information was needed. Unum Life reiterated that it needed a
22 response from Dr. Policicchio to Dr. Johnson's letter. Plaintiff
23 also asked about Dr. Williams' response, and Unum Life advised
24 Plaintiff that he had stated she could perform the demands of her
25 occupation.

26 68. On August 26, 2019, Unum Life received records from Dr.
27 Policicchio from March 1, 2019 to August 1, 2019, which confirmed
28 that Dr. Policicchio had not examined Plaintiff since March 14,

1 2019, but her office continued to issue "off work" slips and
2 refill prescriptions.

3 69. On September 4, 2019, Unum Life Disability Specialist
4 Alicen Cowan informed Plaintiff that Unum Life had determined she
5 failed to prove that she was unable to perform the duties of her
6 regular occupation as of March 15, 2019 and continuously through
7 the Policy's EP.

8 70. On October 3, 2019, Plaintiff submitted a written
9 appeal.

10 71. Plaintiff's appeal included a July 30, 2019 treatment
11 record with Oregon cardiologist Giri Satyendra. The treatment
12 record indicates that Plaintiff told Dr. Satyendra that she
13 retired on disability due to chest pain.

14 72. Dr. Satyendra's physical examination was unremarkable
15 and documented a regular heart rate/rhythm. Assessment
16 indicated, "Has had recurrence of chest pain which has led to the
17 patient retiring on disability in Gold Beach, Oregon. She had
18 been statin intolerant in the past and currently having
19 difficulty continuing her atorvastatin because of muscle aches,
20 tenderness, and elevated liver enzymes (ALT of 120 AST of 251).
21 I recommend that she should be off the statins because of being
22 statin intolerant and she should be started on Repatha (...). I
23 will see her with some standard blood tests results and results
24 of the aforementioned tests within a few months in the outpatient
25 clinic."

26 73. Dr. Satyendra discussed a heart healthy lifestyle for
27 weight loss and recommended moderate physical activity, 30-40
28 minutes a day, 4-6 times per week for weight loss.

1 74. Dr. Satyendra did not offer any opinion regarding
2 Plaintiff's ability to work.

3 75. The July 30, 2019 treatment with Dr. Satyendra was
4 Plaintiff's first cardiology appointment after her March 14, 2019
5 retirement. Thus, Plaintiff had no cardiology treatment during
6 the entire EP.

7 76. On October 16, 2019, Plaintiff forwarded a response
8 from Dr. Policicchio to Dr. Johnson's July 16 letter stating she
9 disagreed that Plaintiff could meet her occupational demands.

10 77. Dr. Policicchio's response provided no details or
11 clinical evidence supporting her conclusion. In response to Unum
12 Life's request for the "clinical rationale" for her opinion, Dr.
13 Policicchio stated only, *"After reviewing the patient job duties,*
14 *I agree the patient cannot do her job duties due to the high*
15 *demand."*

16 78. On October 24, 2019, Unum Life obtained an opinion from
17 Dr. Beth Schnars, MD, Board Certified in Internal Medicine, who
18 reviewed Plaintiff's records and found they did not support that
19 she was precluded from performing her occupational duties as of
20 March 15, 2019 and continuously through the EP.

21 79. Dr. Schnars noted there was no evidence of residual or
22 progressive pathology consistent with work impairment, that
23 Plaintiff's recent diagnostic testing showed her heart and her
24 medication management were stable, and pointed out the absence of
25 any aggressive medication management, and the large gaps in
26 cardiology evaluations.

27 80. Dr. Schnars noted that the recent treatment with Dr.
28 Satyendra showed a normal cardiopulmonary exam and that a recent

1 Oregon hospitalization for gastrointestinal issues was not
2 significant and that despite Plaintiff's comments about
3 escalation of work stress, there was no behavioral health
4 evaluation for stress symptoms or therapy or medications
5 prescribed for stress.

6 81. On October 28, 2019, prior to rendering its appeal
7 decision, Unum Life provided Plaintiff an opportunity to review
8 and respond to the information reviewed, considered and generated
9 during the appeal.

10 82. Plaintiff did not respond or request an extension to
11 respond.

12 83. On November 14, 2019, Unum Life Lead Appeals Specialist
13 Karen Connolly determined that Unum Life's initial decision was
14 correct, i.e., Plaintiff failed to prove that she was unable to
15 perform her occupational duties when she stopped working.

16 84. Unum Life noted that Plaintiff's cardiac diagnostics in
17 December 2018 did not reveal any issues and there was no change
18 in treatment in January 2019 when Plaintiff saw her cardiologist.

19 85. Unum Life also noted that during Dr. Williams' visit in
20 June 2019, Plaintiff did not report fatigue, chest pain,
21 palpitations, or shortness of breath.

22 86. Unum Life also found that Dr. Policicchio's opinions
23 were not supported by the medical evidence.

24 87. Unum Life informed Plaintiff of her available options,
25 including filing an ERISA action.

26 88. At the time of Unum Life's final decision on November
27 14, 2019, Plaintiff's SSDI claim had been denied.

28 ///

III. CONCLUSIONS OF LAW

A. Jurisdiction

1. This Court has federal question jurisdiction over claims brought pursuant to ERISA. See Clorox Co. v. U.S. Dist. Court for N. Dist. of Cal., 779 F.2d 517, 521 (9th Cir. 1985) ("ERISA creates a federal cause of action, with concurrent state and federal jurisdiction, over claims by an employee 'to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.'") (quoting 29 U.S.C. § 1132(a)(1)).

B. Legal Standard

2. The parties agree that review is de novo. Pl.'s Mot. at 16, ECF No. 12; Def.'s Cross-Mot at 13, ECF No. 16. "When conducting a de novo review of the record, the court does not give deference to the claim administrator's decision, but rather determines in the first instance if the claimant has adequately established that he or she is disabled under the terms of the plan." Muniz v. Amec Const. Mgmt., Inc., 623 F.3d 1290, 1295-96 (9th Cir. 2010); see also Kearney v. Standard Ins. Co., 175 F.3d 1084, 1095 (9th Cir. 1999) (holding that under a de novo review, a district court evaluates "whether [the Plaintiff] is disabled within the terms of the policy"), cert. denied, 528 U.S. 964 (1999).

3. Under a de novo review, Plaintiff has the burden to show, by a preponderance of the evidence, that she was disabled under the terms of the Policy during the claim period. Oster v. Standard Ins. Co., 759 F. Supp. 2d 1172, 1185 (N.D. Cal. Jan. 5,

2011).

4. The administrative record furnishes "the primary basis of review." Kearney, 175 F.3d at 1090. The AR consists of "the papers the insurer had when it denied the claim." Id. at 1086.

5. Plaintiff requests that the Court consider additional evidence not within the AR; however, because the Court granted Defendant's motion to strike Plaintiff's extrinsic evidence in its Order at ECF No. 33, the Court denies Plaintiff's request as moot.

C. Terms of the Policy

6. Under the terms of the Policy, a claimant is disabled when she is "limited from performing the material and substantial duties of [her] regular occupation due to [her] sickness or injury," and when she has "a 20% or more loss in [her] indexed monthly earnings due to the same sickness or injury." Policy ("POL") at 18, ECF No. 11-3.

7. Under the terms of the Policy, a claimant's "regular occupation" is her occupation "as it is normally performed in the national economy, instead of how the work tasks are performed for a specific employer or at a specific location." POL at 36.

8. Defendant determined that, in the national economy, Plaintiff's regular occupation as a Director of Laboratory Services required "frequent sitting, reaching, handling, and fingering, and occasional standing, walking, and stooping" with "occasional exertion up to 20 pounds, consistent with Plaintiff's [own] earlier report." Def.'s Cross-Mot. at 7.

9. Plaintiff argues that "the bare physical requirements listed by [D]efendant fail to cover the scope of [P]laintiff's

1 duties." Pl.'s Opp'n at 6, ECF No. 20. Although Plaintiff
2 established on the record that her job as a Director of
3 Laboratory Services was highly stressful and that she was
4 expected to be on-call 24/7, Plaintiff did not establish that
5 these characteristics are true of her occupation in the national
6 economy. As such, these characteristics do not form part of
7 Plaintiff's "regular occupation" for the purpose of this Court's
8 de novo review.

9 10. Under the policy, a claimant is entitled to benefit
10 payments after an Elimination Period, which is "a period of
11 continuous disability which must be satisfied before you are
12 eligible to receive benefits." POL at 34. Plaintiff's
13 elimination period as a Group 2 policyholder is 90 days, which
14 ran from March 16, 2019 to June 13, 2019. Administrative Record
15 ("AR") at UA-CL-LTD-RUNION-000747, ECF No. 11-2.

16 D. Analysis

17 11. Plaintiff's medical history does not support by a
18 preponderance of the evidence that Plaintiff was unable to work
19 in her regular occupation.

20 12. The medical records do not show that Plaintiff's
21 diagnoses impaired her to a degree that she was no longer able to
22 perform her duties as of March 15, 2019. Rather, she worked full
23 time concurrent with her treatment through her last day worked on
24 March 14, 2019.

25 13. Four medical professionals reviewed her medical history
26 and concluded that Plaintiff was not disabled under the Policy:
27 Unum Life's Registered Nurse Sherry Roy, Unum Life's On-Site
28 Physician Dr. Wesley Johnson, Unum Life's Designated Medical

1 Officer Dr. Zaw Maung, and Plaintiff's own doctor, Dr. Reginald
2 Williams.

3 14. Plaintiff's cardiology exams prior to her work stoppage
4 were normal, Plaintiff had been able to successfully return to
5 work after both her 2015 heart surgery and her May 8, 2018
6 hospital visit, her bypass grafts were patent as of December
7 2018, and there was no documented acceleration of her treatment
8 on her last day of work (March 14, 2019). Id. at UA-CL-LTD-
9 RUNION-000333-339. In January 2019, three months before
10 Plaintiff retired, Cardiologist Dr. Yu noted that she did not
11 need to see Plaintiff for six months. Id. at AR at UA-CL-LTD-
12 RUNION-000356-357.

13 15. No physician advised Plaintiff to stop working, or to
14 limit or restrict her work activities, before her last day of
15 work on March 14, 2019 when she worked a full 8 hour day. Id. at
16 UA-CL-LTD-RUNION-000156-157, 560.

17 16. The only doctor on the record who supports Plaintiff's
18 claim is her primary care physician, Dr. Dolores Policicchio.
19 Plaintiff argues that her "primary treating physician is best
20 suited to determine whether [her] patient's subjective experience
21 is disabling," because her PCP has observed her "over a prolonged
22 period of time." Pl.'s Mot. at 21. These observations, however,
23 are absent from Plaintiff's medical records, which she concedes:
24 "Many of these observations never reached the written medical
25 record, since they are used by the doctor for diagnosis and
26 treatment, as contrasted to the preparation of an explanatory
27 document." Id.

28 17. Plaintiff asks the Court to give significant weight to

1 Dr. Policicchio's opinion. Id.

2 18. As a matter of law, ERISA claim administrators are not
3 obligated to give special deference to the opinions of treating
4 physicians. See Black & Decker Disability Plan v. Nord, 538 U.S.
5 822, 834 (2003) ("Courts have no warrant to require
6 administrators automatically to accord special weight to the
7 opinions of a claimant's physician").

8 19. District courts, however, "may evaluate the weight of
9 each doctor's opinion" when handling ERISA appeals. Shaw v. Life
10 Ins. Co. of N. Am., 144 F. Supp. 3d 1114, 1129 (C.D. Cal. 2015).
11 When evaluating the credibility of a treating physician's
12 opinions the Court should look to (1) the extent of the patient's
13 treatment history, (2) the doctor's specialization or lack
14 thereof, and (3) how much detail the doctor provides supporting
15 his or her conclusions. Id. at 1129.

16 20. In the Ninth Circuit, courts have afforded more weight
17 to the opinions of physicians who have personally examined a
18 patient. See Salomaa v. Honda Long Term Disability Plan, 642
19 F.3d 666, 676 (9th Cir. 2011). With respect to Dr. Policicchio,
20 the Court finds that she was not in regular contact with
21 Plaintiff and the treatment history in the AR does not support
22 the credibility of her opinion.

23 21. Dr. Policicchio last saw Plaintiff in person on March
24 14, 2019, where she reported Plaintiff was "alert, well
25 appearing, and in no distress." AR at UA-CL-LTD-RUNION-000333-
26 334. Dr. Policicchio diagnosed fatigue and issued a Work Status
27 Report placing Plaintiff off work from March 15 to May 14, 2019.
28 Id. On May 17, 2019, following an email request from Plaintiff,

1 Dr. Policicchio issued another Work Status Report placing
2 Plaintiff off work from May 15 to July 31, 2019. Id. at UA-CL-
3 LTD-RUNION-000319-320; 493. Despite these Work Status Reports,
4 Dr. Policicchio's own records confirm that Dr. Policicchio did
5 not examine Plaintiff in person after March 14, 2019. Id. at UA-
6 CL-LTD-RUNION-000702-16. Because Dr. Policicchio did not see or
7 examine Plaintiff during the applicable Elimination Period from
8 March 16, 2019 to June 13, 2019, the Court finds a lack of
9 treatment history to support Dr. Policicchio's medical conclusion
10 about the Plaintiff during this timeframe.

11 22. The Court next considers Dr. Policicchio's area of
12 specialty and whether it relates to the alleged disability. The
13 Court finds that Dr. Policicchio's experience as a primary care
14 physician qualifies her to give an opinion about Plaintiff's
15 fatigue, which is the primary basis for Plaintiff's disability
16 claim.

17 23. Finally, the Court considers the level of detail
18 Dr. Policicchio offered in support of her medical opinion.
19 "[T]he more detail a physician provides concerning the bases for
20 his or her diagnosis and opinion, the more weight his or her
21 conclusions are afforded." Shaw, 144 F. Supp. 3d at 1130-1131.
22 In response to Defendant's July 2019 letter requesting
23 Dr. Policicchio's opinion on Plaintiff's ability to meet her
24 occupational demands, Dr. Policicchio wrote only: "After
25 reviewing the patient job duties, I agree the patient cannot do
26 her job duties due to the high demand." AR at UA-CL-LTD-RUNION-
27 000847-850. As such, the Court finds Dr. Policicchio did not
28 provide any information to support her medical conclusion.

1 24. Considering these factors, the Court finds that
2 Dr. Policicchio's evaluation should be given little weight,
3 because she did not treat Plaintiff during the Elimination Period
4 and because she failed to offer any details supporting her
5 conclusion in her response to Defendant's inquires.

6 25. Based on the medical record furnished in the AR, there
7 is not sufficient evidence to satisfy Plaintiff's burden of
8 showing by a preponderance of the evidence that she was unable to
9 perform the material duties of her regular occupation.

10 E. Conflict of Interest

11 26. Plaintiff argues that Defendant suffered from a
12 conflict of interest that caused it to breach its fiduciary duty
13 under ERISA. Pl.'s Mot. at 17. Plaintiff contends that
14 Defendant failed to adequately investigate her claim, failed to
15 provide a full and fair review, and failed to have a doctor
16 evaluate her in person. Id. at 17-19.

17 27. As a matter of law in the Ninth Circuit, on de novo
18 review, the Court evaluates "whether the plan administrator
19 correctly or incorrectly denied benefits, without reference to
20 whether the administrator operated under a conflict of interest."
21 Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th
22 Cir. 2006) (emphasis added). As noted above, the parties do not
23 dispute that review is de novo. Accordingly, the Court need not
24 reach Plaintiff's argument.

25 F. Conclusion

26 28. Plaintiff did not satisfy her burden to prove by a
27 preponderance of the evidence that her sickness or injury
28 prevented her from performing the material and substantial duties

1 of her regular occupation as it is defined in the national
2 economy during the elimination period.

3 29. Accordingly, the Court concludes that the medical
4 evidence in the AR weighs in favor of a finding that Defendant
5 properly denied Plaintiff's disability benefits claim.

6 IV. ORDER

7 Based on the findings of fact and conclusions of law set
8 forth above, the Court orders that judgment be entered against
9 Plaintiff and in favor of Defendant. The Clerk of the Court
10 shall enter judgment accordingly.

11 IT IS SO ORDERED.

12 Dated: April 7, 2022

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14 JOHN A. MENDEZ,
15 UNITED STATES DISTRICT JUDGE
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